

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

SCOTIABANK DE PUERTO RICO et al.,

Plaintiffs,

v.

ALEJANDRO GARCÍA PADILLA et al.,

Defendants.

CIVIL NO. 16-2736 (FAB)

**MOTION REGARDING PROMESA STAY AND FOR EXTENSION OF TIME TO
ANSWER THE AMENDED COMPLAINT OR OTHERWISE PLEAD**

TO THE HONORABLE COURT:

COME NOW, co-defendants Hon. Alejandro García Padilla, Hon. Juan C. Zaragoza Gómez and Hon. Luis Cruz Batista, in their respective official capacities (collectively “defendants”), specially appearing and without submitting to the jurisdiction or venue of this Court, and hereby state and pray as follows:

1. Plaintiffs filed their original complaint on September 28, 2016 (Dkt. No. 1), almost three months after the enactment of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), 48 U.S.C. § 2101 et seq., on June 30, 2016.

2. On October 17, 2016, plaintiffs filed an amended complaint. Dkt. No. 4.

3. “An amended complaint, once filed, normally supersedes the antecedent complaint. Thereafter, the earlier complaint is a dead letter and ‘no longer performs any function in the case.’” Connectu LLC v. Zuckerberg, 522 F.3d 82, 91 (1st Cir. 2008) (citations omitted).

4. Plaintiffs admit that most if not all the causes of action in their amended complaint are stayed by section 405(b) of PROMESA. As a result, they affirmatively seek relief from the PROMESA stay pursuant to §§ 405(e) or (g) of the Act. Dkt. No. 4 at 15. However, they argue

that, because Counts 2 and 3 of the amended complaint seek relief for alleged violations of PROMESA itself, these claims could not have been commenced before the enactment of PROMESA and are not stayed. Id.

5. On November 11, 2016 the appearing defendants filed a Notice of Automatic Stay pursuant to PROMESA. Dkt. No. 13 (“Notice”). In said Notice, incorporated herein by reference, defendants argued that this case is stayed in its entirety pursuant to sections 405(b)(1) and 405(b)(3-6) of PROMESA. In the alternative, defendants requested that the Court stay the piecemeal litigation and disposition of Counts 2-3 of the amended complaint in the exercise of its discretion and its inherent power to manage its docket. Id.

6. On November 16, 2016 the Court entered an Order stating that it will consider the filing of the Notice as a motion. Dkt. No. 16.

7. On November 15, 2016, this Court issued an Opinion and Order denying plaintiffs’ request to lift the PROMESA stay in several cases consolidated with the case of Brigade Leveraged Capital Structures Fund Ltd. v. The Government Development Bank for Puerto Rico, Civ. No. 16-1610. Dkt. No. 140. In so ruling, this Court held that vacating the stay would undermine “the comprehensive, consolidated approach that [PROMESA] was ultimately designed to facilitate.” Id. at 42. The Court also concluded that “[a]llowing the creditors in these actions to litigate their individual solutions in court, however, would interfere with the orchestration of this approach” and would “in essence, permit them to ‘jump to the front of the line’ to protect their own interests before other creditors have had the opportunity to defend theirs.” Id. at 42-43. Allowing the piecemeal litigation of claims advocated by the plaintiffs in this case—which is premised on technical distinctions regarding the statutory predicates for their different causes of action but ignores the scope of the relief requested—would lead to precisely such a result, which PROMESA

sought to avoid. Defendants respectfully submit that this Court's decision in Brigade militates in favor of a complete stay of plaintiffs' claims in this case.

8. In the alternative, and in the interest of judicial economy, defendants respectfully request an extension of time until December 16, 2016 to answer the amended complaint or otherwise plead. The extension sought is justified for the following reasons.

9. First, on November 16, 2016, the Court entered an Order granting co-defendant the Metropolitan Bus Authority until December 16, 2016 to answer the amended complaint or otherwise plead. Dkt. No. 15. Hence, granting the extension sought herein would not delay the proceedings in any way and would set a single deadline for all defendants to answer the amended complaint or otherwise plead, should such a pleading be required.

10. Second, in the interest of judicial economy and in keeping with the purpose behind PROMESA, granting the alternative extension sought herein might allow the Court to make a final determination regarding the applicability of the stay mandated by PROMESA to Counts 2-3 of the amended complaint before any responsive pleadings are due. Such a determination might make unnecessary the filing of premature responsive pleadings and might provide some clarity as to how to address plaintiffs' contention (with which defendants clearly disagree) that two of their causes of action should be individually and separately litigated at this time, pending the expiration of the PROMESA stay only a few months from now.

WHEREFORE, for the foregoing reasons and those stated in the Notice filed at Dkt. No. 13 (incorporated herein by reference), this action should be stayed as a matter of law by section 405 of PROMESA. In the alternative, defendants' respectfully request that the Court stay the piecemeal litigation and disposition of Counts 2 and 3 of the amended complaint in the exercise

of its discretion and its inherent power to manage its docket, or grant defendants until December 16, 2016 to answer the amended complaint or otherwise plead.

RESPECTFULLY SUBMITTED.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

In San Juan, Puerto Rico, this 17th day of November, 2016.

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